

FINAL ORDER

DATE 10/15/10

IN THE MATTER OF

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BEFORE THE

SUNNYMTG.COM
866-768-CASH, LLC,

*

COMMISSIONER OF

*

FINANCIAL REGULATION

Respondent.

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OAH NO.: DLR-CFR-76A-10-16751

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PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order in the Proposed Decision of the Administrative Law Judge in the captioned case having been received, read and considered, it is, by the Commissioner of Financial Regulation (the "Commissioner") this 16th day of September, 2010,

A. **ORDERED** that the Findings of Fact in the Proposed Decision be, and hereby are adopted; and it is further

B. **ORDERED** that the Conclusions of Law in the Proposed Decision be, and hereby are, adopted; and it is further

C. **ORDERED** that the Recommended Order in the Proposed Decision be, and hereby is, **AMENDED** by adding the following paragraphs immediately prior to the last paragraph of the Recommended Order (which reads "and ORDER that the records and publications of the CFR reflect this decision"), and immediately after the matrix setting forth the refunds required to be paid by Respondent to the borrowers [REDACTED]

[REDACTED], and [REDACTED]:

"**ORDER** that Respondent shall, within fifteen (15) days from the date that this Proposed Order becomes a final decision of the CFR, mail to each of the borrowers identified above their respective itemized refunds via U.S. First Class Mail at the last address of each borrower known to Respondent. If a mailed payment is returned as undeliverable by the U.S. Postal Service, Respondent shall promptly notify the CFR in writing for further instruction as to the means of making of said payment. Upon making a required payment, the Respondent shall furnish evidence of

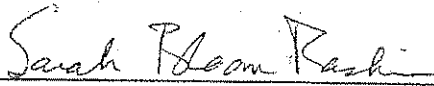
payment to the CFR within fifteen (15) days, which evidence shall consist of a copy of the front and back of the cancelled check for the payment;

ORDER that Respondent shall pay to the CFR, by cashier's or certified check made payable to the "Commissioner of Financial Regulation" the civil penalties and the past-due examination fee required herein within fifteen (15) days from the date that this Proposed Order becomes a final decision of the CFR;

ORDER that Respondent shall send the proof of payment for the refunds, and the payment for civil penalties and examination, fee to the following address: Commissioner of Financial Regulation, 500 North Calvert Street, Baltimore, Maryland 21202, Attn: Jessica Wiener, Paralegal;"

Pursuant to Maryland Code Ann., State Government § 10-220, the Commissioner sets forth the reasons for modifying the Recommended Order as follows: The Commissioner determines it necessary to (i) set a deadline by which time the payment of the refunds, civil penalties, and past-due examination fee must be paid by Respondent, (ii) require Respondent to provide to the Commissioner proof that the refund payments were made, and (iii) provide Respondent with instructions on how and where to make the required payments and provide the requisite proof of making the refund payments.

Pursuant to COMAR 09.01.03.09, Respondent has the right to file exceptions to the Proposed Order and present arguments to the Commissioner. Respondent has twenty (20) days from the postmark date of this Proposed Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). The date of filing exceptions with the Commissioner is the date of personal delivery to the Commissioner or the postmark date on mailed exceptions. COMAR 09.01.03.09A(2). Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Order shall be deemed to be the final decision of the Commissioner.



Sarah Bloom Raskin
Commissioner of Financial Regulation

IN THE MATTER OF

Sunnymtg.com 866-768-CASH, LLC,

RESPONDENT

Mortgage Lender License No. 06-15916

* BEFORE UNA M. PEREZ,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE OF

* ADMINISTRATIVE HEARINGS

* OAH CASE No: DLR-CFR-76A-10-16571¹

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

By Order dated April 22, 2010, the Maryland Commissioner of Financial Regulation (CFR), in the Department of Labor, Licensing and Regulation (DLLR), summarily suspended the Maryland Mortgage Lender License of Sunnymtg.com 866-768-CASH, LLC (Respondent); ordered the Respondent to cease and desist from acting as a mortgage lender or mortgage broker; ordered the Respondent to cease and desist from violating various provisions of the Financial Institutions (FI) and the Commercial Law (CL) Articles of the Annotated Code of Maryland, as charged in the Order; and ordered the Respondent to produce certain information and records.

On or about April 28, 2010, the CFR referred the matter to the Office of Administrative Hearings (OAH) for a hearing.² I held a hearing on June 17, 2010, at the OAH in Hunt Valley,

¹ As transmitted by the CFR, this case was categorized as 76B, Financial Institution Licensing. It is more appropriately characterized as 76A, Financial Institution Discipline, and the number has been changed accordingly.

² The CFR delegated to the OAH the authority to issue proposed findings of fact and conclusions of law, and a recommended order. Md. Code Ann., State Gov't. § 10-205 (2009).

Maryland. Md. Code Ann., Fin. Inst. § 11-518 (2003). Jedd Bellman, Assistant Attorney General, represented the CFR. No one purporting to represent the Respondent appeared.³

Procedure in this case is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2009), the Rules of Procedure of the OAH, Code of Maryland Regulations (COMAR) 28.02.01, and COMAR 09.01.03.

ISSUES

1. Did the Respondent fail to pay the CFR a mandatory examination fee, despite demand, as required by section 11-515(c) of the FI Article and COMAR 09.03.06.23D?
2. Did the Respondent fail to produce information and documents as required by the CFR's April 22, 2010 Order to Produce, in violation of section 2-114 of the FI Article?
3. Did the Respondent accept loan referrals from persons who were not duly licensed by the CFR as mortgage loan originators, in violation of section 11-602 and 11-603 of the FI Article and COMAR 09.03.06.03B?
4. Did the Respondent fail to comply with applicable finder's fee requirements under Maryland law, in violation of section 12-804 of the CL Article?
5. Did the Respondent fail to provide borrowers with a broker agreement within ten business days after completion of their respective applications, in violation of section 12-805 of the CL Article?
6. Did the Respondent fail to include and maintain in borrowers' loan files appraisal documents, in violation of COMAR 09.03.06.04B?
7. Did the Respondent fail to include and maintain in borrowers' loan files invoices for third party processing services, in violation of COMAR 09.03.06.04B?
8. If any violations are found, what, if any, sanctions and/or monetary penalties, including restitution to borrowers, should be imposed?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the CFR:

³ Notice to the Respondent, and its failure to appear, are discussed at page 7, below.

Exhibit #	Exhibit Description
CFR 1	Notice of Hearing, May 13, 2010
CFR 1A	Certified Mail return receipt "Unclaimed", June 8, 2010
CFR 2	Delegation Letter to Office of Administrative Hearings, April 28, 2010
CFR 3	Summary Order to Cease and Desist and Summary Suspension of Respondent's Maryland Mortgage Lender License, and Order to Produce, April 22, 2010
CFR 3A	Affidavit of Service, April 23, 2010
CFR 3B	Certified Mail receipt, April 23, 2010
CFR 4	Licensing Information (AS400), June 14, 2010
CFR 5	Corporation Information (Florida Department of State, Division of Corporations; found at www.sunbiz.org), June 14, 2010
CFR 6	Report of Examiner, May 22, 2009
CFR 7	Examiner's Findings, May 22, 2009
CFR 8	Manager's Questionnaire (for the May 2009 examination)
CFR 9	Invoice: Mortgage Lenders Examination Fee (May 2009 examination), June 16, 2009
CFR 9A	Invoice collection efforts (compilation)
CFR 10	██████████ (partial loan file), 2007
CFR 11	██████████ (partial loan file), 2008
CFR 11A	Licensing Information (AS400) – ██████████ ██████████ June 14, 2010
CFR 12	██████████ (partial loan file), 2007

CFR 13	[REDACTED] (partial loan file), 2007
CFR 14	[REDACTED] (partial loan file), 2007
CFR 15	[REDACTED] (partial loan file), 2007
CFR 16	[REDACTED] (partial loan file), 2008
CFR 17	[REDACTED] (partial loan file), 2008
CFR 18	Request for Return of \$1,100.00 Overage to Sunnymtg.com 866-768-CASH, LLC, November 20, 2006
CFR 18A	Canceled Check issued by the State of Maryland, September 11, 2009
CFR 19	Georgia Action: Press Release, January 7, 2009
CFR 19A	Georgia Action: Order to Cease and Desist, May 15, 2008
CFR 19B	Georgia Action: Memorandum Opinion against Sunnymtg.com 866-768-CASH, LLC, November 5, 2008
CFR 19C	Georgia Action: Initial Decision Order of Dismissal, Sunnymtg.com 866-768-CASH, LLC, December 19, 2008
CFR 19D	Georgia Action: Memorandum Opinion against Sumit Gaddh, November 5, 2008
CFR 19E	Georgia Action: Initial Decision Order of Dismissal, Sumit Gaddh, December 19, 2008
CFR 19F	Georgia Action: Hearing Transcript, December 18, 2008

The Respondent was not present to offer any exhibits.

Testimony

George Kinsel, Director of Compliance, and Matthew Mainolfi, Financial Examiner, testified on behalf of the CFR. No witnesses appeared on behalf of the Respondent.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Respondent is an active Florida limited liability company (LLC), with its principal offices located at 1910 East Oakland Park Boulevard, Suite C, Fort Lauderdale, Florida 33306. CFR Ex. #5.
2. At all times relevant to this matter, the Respondent has been a licensed mortgage lender in Maryland, License No. 06-15916. CFR Ex. # 4.
3. The Respondent's Maryland Mortgage Lender's License (License) is due to expire on October 5, 2010. CFR Ex. # 4.
4. Sumit Gaddh (Gaddh), an individual, is the Manager and 100% owner of the Respondent LLC. CFR Ex. # 8, at 10.
5. In May 2009, the CFR conducted an examination of a sample of the Respondent's Maryland loan files. The purpose of the examination was to evaluate the Respondent's compliance with applicable state and federal laws and regulations.
6. The sample consisted of twenty loan files dating from calendar years 2007 and 2008. Eight loans were purchase money mortgages; the remaining twelve were to refinance existing mortgages. CFR Ex. #6.
7. The examination revealed numerous violations of applicable laws and regulations. See generally CFR Ex. ## 6 and 7. Several files revealed more than one violation.
8. Specifically, in three loan files the mortgage loan was originated by an individual who was not licensed within the scope of employment with the Respondent (██████████ CFR Ex. #11) or not licensed at all (██████████ CFR Ex. #16, and ██████████ CFR Ex. #17). The signature of the originator was whited out in a fourth file (██████████, CFR Ex. #14); it is not possible to determine if that originator was licensed.

9. In four loan files (██████████, CFR Ex. # 10; ██████████, CFR Ex. #12; ██████████, CFR Ex. #14; and ██████████, CFR Ex. #15) the Mortgage Brokerage Business Contract (broker agreement) provided for a finder's fee in excess of 8% of the amount of the loan.
10. In three loan files (██████████, CFR Ex. #10; ██████████, CFR Ex. #13; and ██████████, CFR Ex. #16) a signed and dated copy of the broker agreement was not delivered to the borrower within ten business days after the loan application was completed.
11. In four loan files (██████████, ██████████, ██████████, and ██████████) appraisal documents were missing. CFR Ex. #7, page 3 of 3.
12. In two loan files (██████████ and ██████████) invoices for third party processing services were missing. CFR Ex. #7, page 3 of 3.
13. The form broker agreement used by the Respondent did not advise borrowers of the right to a refund of the finder's fee upon the exercise of a right to rescind the loan. CFR Ex. #7, page 2 of 3.
14. The CFR mailed the results of the examination (CFR Ex. ##6 and 7) to the Respondent, requiring it to provide a written response to the findings within thirty days. CFR Ex. #7. The Respondent did not do so.
15. From the time it was first licensed through April 22, 2010, the Respondent has never had any licensed Maryland mortgage loan originators acting on its behalf within the scope of employment with the Respondent.
16. In May 2008, the Georgia Department of Banking and Finance (Georgia authorities) issued a Notice of Intent to Revoke Annual License and a Cease and Desist Order against the Respondent and Gaddh, respectively, alleging violations of the Georgia Residential Mortgage Act and related regulations. CFR Ex. ##19 and 19A.

17. After an administrative proceeding (*see* CFR Ex. ##19B through 19F), the Georgia authorities accepted the surrender of the Respondent's Georgia mortgage lender's license, and entered a final Cease and Desist Order against Gaddh, both effective December 18, 2008. The Respondent may never re-apply for a mortgage lender's license in the State of Georgia; it was required to cease all mortgage lender activities by March 1, 2009. CFR Ex. #19, at 2.
18. Despite demand, the Respondent has not paid to the CFR the statutorily required fee for the May 2009 examination of its books and records. CFR Ex. ## 9 and 9A,
19. The Respondent did not produce documents and other materials as ordered by the CFR in the Order to Produce of April 22, 2010.

DISCUSSION

Preliminary Issue – the Respondent's Failure to Appear

The Respondent is an LLC. As noted above, no one appeared to represent it, nor did its Manager/owner, Gaddh, appear. I conclude that the Respondent failed to appear for the hearing despite adequate notice, for the following reasons.

First, there is no dispute that the Respondent's address of record since January 2007 has been 1910 East Oakland Park Boulevard, Fort Lauderdale, Florida 33306. This address is currently reflected on the records of the Florida Department of State, Division of Corporations (CFR Ex. #5) and of DLLR (CFR Ex. #4).

On or about April 23, 2010, the CFR used the Florida address to effect certified mail service of the Summary Order to Cease and Desist and Summary Suspension of Respondent's Maryland Mortgage Lender License, and Order to Produce. CFR Ex. ##3, 3A, and 4; *see* COMAR 09.01.02.07A and B.

The OAH issued a Notice of Hearing (Notice) on May 13, 2010, and mailed it by certified and regular mail to the Respondent's Florida address. *See* COMAR 09.01.02.06C.

Although the certified mail copy of the Notice was returned "unclaimed," the regular mail copy was not. CFR Ex. ## 1 and 1A.

Furthermore, counsel for the CFR proffered that after the issuance of the Notice, he had been contacted by a Florida attorney on behalf of the Respondent. The attorney was aware of the scheduled hearing, and asked if the Respondent could have until June 1, 2010 to produce the documents that the CFR had ordered it to produce. Notwithstanding this overture, no attorney ever entered an appearance and the Respondent did not produce any documents by June 1, 2010. No request for postponement of the hearing was made on behalf of the Respondent.

I concluded from these facts that the Respondent had actual notice of the hearing but chose not to appear. I determined that it was appropriate to proceed with the hearing in the Respondent's absence. COMAR 09.01.02.09.

Applicable Law

The Burden of Proof

The CFR, as the moving party on the charges, has the burden to prove by a preponderance of the evidence that the Respondent violated the statutory and regulatory sections at issue. See Md. Code Ann., State Gov't Art., § 10-217 (2009); *Comm'r of Labor and Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996).

Summary Suspension of License

The CFR summarily suspended the Respondent's License under section 10-226(c)(2) of the State Government Article, which provides:

(2) A unit [of State government] may order summarily the suspension of a license if the unit:

(i) finds that the public health, safety, or welfare imperatively requires emergency action; and

(ii) promptly gives the licensee:

1. written notice of the suspension, the finding, and the reasons that support the finding; and
2. an opportunity to be heard.

Md. Code Ann., State Gov't § 10-226(c)(2) (2009). The CFR's power to issue summary cease and desist orders is found in section 2-115 of the FI Article, which provides in pertinent part as follows:

(a) When the Commissioner determines that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, and that immediate action against the person is in the public interest, the Commissioner may in the Commissioner's discretion issue, without a prior hearing, a summary order directing the person to cease and desist from engaging in the activity, provided that the summary cease and desist order gives the person:

(1) Notice of the opportunity for a hearing before the Commissioner to determine whether the summary cease and desist order should be vacated, modified, or entered as final; and

(2) Notice that the summary cease and desist order will be entered as final if the person does not request a hearing within 15 days of receipt of the summary cease and desist order.

Md. Code Ann., Fin. Inst. § 2-115(a) (2003).

Commissioner's General Power to Regulate Licensees

The CFR's authority over mortgage lender licensees is found in Title 11, subtitle 5 of the FI Article, the Maryland Mortgage Lender's Law (MMLL). As pertinent to this case, section 11-517 provides in pertinent part:

(a) Subject to the hearing provisions of § 11-518 of this subtitle, the Commissioner may suspend or revoke the license of any licensee if the licensee or any owner, director, officer, member, partner, stockholder, employee, or agent of the licensee:

(4) Violates any provision of this subtitle or any rule or regulation adopted under it or any other law regulating mortgage loan lending in the State; or

(5) Otherwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly, fairly, equitably, and efficiently.

...

(c)(1) The Commissioner may enforce the provisions of this subtitle, regulations adopted under § 11-503 of this subtitle, and the applicable provisions of Title 12 of the Commercial Law Article by:

(i) Issuing an order:

1. To cease and desist from the violation and any further similar violations; and
2. Requiring the violator to take affirmative action to correct the violation including the restitution of money or property to any person aggrieved by the violation; and

(ii) Imposing a civil penalty not exceeding \$5,000 for each violation.

...

(e) In determining the amount of financial penalty to be imposed under subsection (c) of this section, the Commissioner shall consider:

- (1) The seriousness of the violation;
- (2) The good faith of the violator;
- (3) The violator's history of previous violations;
- (4) The deleterious effect of the violation on the public and mortgage industry;
- (5) The assets of the violator; and

(6) Any other factors relevant to the determination of the financial penalty.

(f) The employment of a mortgage originator licensed under Subtitle 6 of this title by a mortgage lender does not relieve the mortgage lender of a responsibility under this subtitle, a rule or regulation adopted under this subtitle, or a law governing mortgage lending in the State.

Md. Code Ann., Fin. Inst. § 11-517 (Supp. 2009). The CFR has similar powers with respect to mortgage loan originators, as set forth in Title 11, subtitle 6 of the FI Article, the Maryland Mortgage Originator's Law (MMOL). *See* Md. Code Ann., Fin. Inst. § 11-615 (Supp. 2009).

The CFR's general power to impose sanctions, subject to notice and a right to a hearing, is contained in section 2-115 of the FI Article, which provides in pertinent part as follows:

(b) When the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, the Commissioner may in the Commissioner's discretion and in addition to taking any other action authorized by law:

- (1) Issue a final cease and desist order against the person;
- (2) Suspend or revoke the license of the person;
- (3) Issue a penalty order against the person imposing a civil penalty up to the maximum amount of \$1,000 for a first violation and a maximum amount of \$5,000 for each subsequent violation; or
- (4) Take any combination of the actions specified in this subsection.

Md. Code Ann., Fin. Inst. § 2-115(b) (2003). The factors to be considered in imposing penalties are the same as those set forth in sections 11-517(e) and 11-615(e). Md. Code Ann., Fin. Inst. § 2-115(c) (2003).

The CFR is required to examine the business of licensees at regular intervals, and may investigate alleged violations of law. As pertinent to this case, section 11-515 of the FI Article provides:

- (a)(1) The Commissioner shall examine the business of each licensee:
 - (i) In accordance with a schedule established by the Commissioner; and
 - (ii) At any other time that the Commissioner reasonably considers necessary.
- (b)(2) The Commissioner may make any other investigation of any person if the Commissioner has reasonable cause to believe that the person has violated any provision of this subtitle, of any regulation adopted under this subtitle, or of any other law regulating mortgage loan lending in the State.
- (c) A licensee shall pay to the Commissioner a per-day fee set by the Commissioner for each of the Commissioner's employees engaged in:
 - (1) An examination required under subsection (a)(1) of this section; and

- (2) Any other examination or investigation conducted under this section that the Commissioner reasonably considers necessary.
- ...

Md. Code Ann., Fin. Inst. § 11-515 (Supp. 2009). The per-day fee is set by regulation at \$250.00. COMAR 09.03.06.23D. In addition, section 2-114 of the FI Article provides in pertinent part as follows:

- (b) For the purpose of an investigation or proceeding, the Commissioner or an officer designated by the Commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the Commissioner considers relevant or material to the inquiry.

Md. Code Ann., Fin. Inst. § 2-114 (2003). The CFR relied on section 2-114 in the April 22, 2010 Order to Produce. CFR Ex. #3.

Requirement that Originators be Licensed

The Respondent is licensed as a mortgage lender. The MMLL defines "mortgage broker" "mortgage lender" and "mortgage lending business," with exceptions not here applicable, as follows:

- (i) "Mortgage broker" means a person who:

(1) For a fee or other valuable consideration, whether received directly or indirectly, aids or assists a borrower in obtaining a mortgage loan; and

(2) Is not named as a lender in the agreement, note, deed of trust, or other evidence of the indebtedness.

- (j)(1) "Mortgage lender" means any person who:

(i) Is a mortgage broker;

(ii) Makes a mortgage loan to any person; or

(iii) Is a mortgage servicer.

...

(k)(1) "Mortgage lending business" means the activities set forth in the definition of "mortgage lender" in subsection (j) of this section which require that person to be licensed under this subtitle.

...

Md. Code Ann., Fin. Inst. § 11-501 (Supp. 2009). A "mortgage loan originator" is defined in the MMOL, with exceptions not here pertinent, as follows:

(q)(1) "Mortgage loan originator" means an individual who for compensation or gain, or in the expectation of compensation or gain:

(i) Takes a loan application; or

(ii) Offers or negotiates terms of a mortgage loan.

Md. Code Ann., Fin. Inst. § 11-601 (Supp. 2009). Unless exempt by statute, mortgage loan originators must be licensed. *Id.*, § 11-602 (Supp. 2009). The relationship between mortgage lenders and mortgage loan originators is described by the statute as follows:

(a) A license issued under this subtitle authorizes the licensee to act as a mortgage loan originator only when acting within the scope of employment with:

(1) A mortgage lender; or

(2) A person who is exempt from licensing as a mortgage lender.

Md. Code Ann., Fin. Inst. § 11-603 (Supp. 2009).

The current provisions were enacted by Chapter 4, Laws of 2009, effective July 1, 2009. Nonetheless, former section 11-604 of the FI Article, which was repealed by Chapter 4, provided that beginning on January 1, 2007, an individual could not act as a mortgage originator unless the individual was a licensee, or exempt from licensing. Md. Code Ann., Fin. Inst. § 11-604 (Supp. 2007). Similarly, section 11-603 of the FI Article, prior to its amendment in 2009, incorporated the substance of current section 11-603(a)(1). Md. Code Ann., Fin. Inst. § 11-603(a) (Supp. 2007). *See also* COMAR 09.03.06.03B. I make these observations because the examination occurred in May 2009, and the loan files examined dated from 2007 and 2008.

Finder's Fees and Related Agreements

The Maryland Finder's Fee Law (MFFL) is found at Title 12, Subtitle 8 of the CL Article. The term finder's fee is defined as "any compensation or commission directly or indirectly imposed by a broker and paid by or on behalf of the borrower for the broker's services in procuring, arranging, or otherwise assisting a borrower in obtaining a loan or advance of money." Md. Code Ann., Comm. Law § 12-801(c) (Supp. 2009). "A mortgage broker may charge a finder's fee not in excess of 8 percent of the amount of the loan or advance." *Id.*, § 12-804(a) (2005). Further, a finder's fee "may not be charged unless it is pursuant to a written agreement between the mortgage broker and the borrower which is separate and distinct from any other document." *Id.*, § 12-805(d)(1) (Supp. 2009).

A copy of the agreement, dated and signed by each party, must be provided to the borrower by the mortgage broker within ten business days after the date the loan application is completed. Md. Code Ann., Comm. Law § 12-805(d)(3) (Supp. 2009). Any mortgage broker who violates any provision of the subtitle "shall forfeit to the borrower" the greater of three times the amount of the finder's fee collected or \$500.00. *Id.*, § 12-807 (2005).

Specific Violations

Examination Fee; Production of Documents

Before considering the violations related to the several borrowers, I will discuss the Respondent's violations of requirements imposed on it by the CFR.

First, there is no dispute that the CFR, in the person of Mr. Mainolfi, conducted an examination of the Respondent's Maryland loan files in May 2009.⁴ As permitted by section 11-515, the CFR billed the Respondent for the costs of the examination. CFR Ex. #9. The invoices for \$1,031.25 were sent to Allan Taylor, the Respondent's contact person. See CFR Ex. ##6 and

⁴ The Respondent was first licensed in January 2007; this was its initial 18-month examination. See Md. Code Ann., Fin. Inst. § 11-515(a)(2)(ii) (Supp. 2009).

8. Mr. Kinsel testified that despite several demand letters, the Respondent has never paid the examination fee. CFR Ex. #9A.

Mr. Kinsel pointed out that in 2006, the Respondent had paid a license fee twice, and had claimed a refund of \$1,100.00. CFR Ex. #18. A refund of \$1,000.00 was paid in September 2009, after the CFR had sent two invoices for the examination fee. CFR Ex. ## 9A, 18A. Mr. Kinsel thought that the Respondent might have withheld payment of the examination fee because of its outstanding claim for a refund, but noted that there was no legal authority for the Respondent to do this. I find that the CFR has met the burden to prove that the Respondent violated section 11-515(c) of the FI Article and COMAR 09.03.06.23D.

Second, Mr. Mainolfi testified that the Respondent never produced any of the documents identified in the CFR's April 22, 2010 Order to Produce. *See* CFR Ex. #3 at 12-13. Counsel pointed out that the Respondent had been given extra time, i.e., until June 1, 2010, and still did not comply with the CFR's Order. Consequently, I find that the CFR has met the burden to prove that the Respondent violated section 2-114 of the FI Article.

Unlicensed Loan Originators

The [REDACTED] loan file (CFR Ex. #11) revealed that the loan was originated by Vaughn Douglas. *Id.* at page 4 of 5. Although this individual is a licensed mortgage originator, he is licensed with a different employer. CFR Ex. #11A. He is not, and has never been, licensed to act within the scope of employment with the Respondent.

The [REDACTED] and [REDACTED] loan files revealed that the loans were originated by Amos Warindu and Bill Laupert, respectively. *See* CFR Ex. #16, Application at page 4 of 5; CFR Ex. #17, same. There is no evidence that either of these individuals have ever been licensed as mortgage loan originators by the CFR. *See* CFR Ex. #4, last page, "no records were found."

In the [REDACTED] loan file, the signature of the interviewer/originator is whited out, except for the initials S.G.; the typed name is Sunny Gaddh. CFR Ex. #14, Application, page 4 of 5. This person may or may not be Sumit Gaddh, the Respondent's Manager. Finally, apart from these sample loan files, the CFR's investigation revealed that the Respondent has never had any licensed mortgage loan originators working for it. CFR Ex. #4; *see also* CFR Ex. #3, at 11.

For all of these reasons, I find that the CFR has met the burden to prove a violation of section 11-603 and former section 11-604 of the FI Article, and COMAR 09.03.06.03B, in three instances.

Finder's Fees in Excess of 8% of the Loan Amount

In four loan files [REDACTED], [REDACTED], [REDACTED], and [REDACTED] the broker agreement provided for a finder's fee in excess of 8% of the amount of the loan. In the [REDACTED] file, the loan amount was \$107,550.00, and the brokerage fee was specified at \$11,226.50, or 10.4% of the loan amount. CFR Ex. #10. The Settlement Statement (also referred to as the HUD-1), at lines 801 and 810, indicates that \$3,485.02 was collected from the borrower. *Id.* As explained by Mr. Kinsel, however, even if the HUD-1 states that the Respondent collected less than the amount specified, the broker agreement itself constitutes a *per se* violation. Moreover, there is no way to confirm that the Respondent did not collect the full (excessive) finder's fee from the borrower.

In the [REDACTED] file, the loan amount was \$143,863.00, and the brokerage fee was specified at \$13,914.65, or 9.7% of the loan amount. CFR Ex. #12. The HUD-1, at line 808, says that a broker fee of \$1,375.01 was collected from the borrower. *Id.*

In the [REDACTED] file, the loan amount was \$101,500.00, and the brokerage fee was specified at \$12,287.19, or 12% of the loan amount. CFR Ex. #14. The HUD-1, at lines 801 and 810, says that a loan origination fee and a broker fee, totaling \$3,190.00, were collected from the borrower. *Id.*

In the [REDACTED] file, the loan amount was \$133,941.00, and the brokerage fee was specified at \$13,950.00, or 10.4% of the loan amount. CFR Ex. #15. Although the Respondent was paid some fees at settlement, the HUD-1, at lines 808 and 809, indicates that these were paid from the seller's funds, not the borrower's.⁵ *Id.*

For all of these reasons, I find that the CFR has met the burden to prove violations of section 12-804(a) of the CL Article in four instances.

Failure to Timely Deliver the Broker Agreement

As explained by Mr. Mainolfi, in three loan files ([REDACTED], [REDACTED], and [REDACTED]), a comparison of the dates on the loan applications or related documents and the broker agreements demonstrates that the broker agreement was not delivered to the borrower within ten days after the application was completed. In the [REDACTED] file, the application is dated November 1, 2007, and the broker agreement is dated November 25, 2007. CFR Ex. #10. In fact, a Good Faith Estimate was prepared as early as March 25, 2007. *Id.*

In the [REDACTED] file, a Good Faith Estimate and a Credit Report are dated September 12, 2007, and an appraisal report was prepared on October 8, 2007. CFR Ex. #13. Nonetheless, all other documents in the file, including the broker agreement, are dated November 16, 2007. *Id.* The HUD-1, at line 805, indicates that a Broker Origination Fee of \$2,212.50 was paid to "Edward Williams" from the borrower's funds. *Id.* An invoice for appraisal services in the file is addressed to Edward Williams at "Sunny Mortgage" at the Respondent's Fort Lauderdale address.⁶ *Id.*

⁵ The protections of the Finder's Fee Law run to the borrower. See generally sections 12-801 through 12-807 of the CL Article.

⁶ There may or may not be some relationship between the borrower and [REDACTED]. The HUD-1 identifies the borrower as "[REDACTED] now known as [REDACTED]." CFR Ex. #13. [REDACTED] is a common surname, however.

In the [REDACTED] file, a Credit Report and a Good Faith Estimate were prepared on June 25, 2008. CFR Ex. #16. The loan application is reproduced twice in the file. The first copy shows Amos Warindu as the interviewer; it is signed by the borrower but not dated. The second copy shows Sumit Gaddh as the interviewer; it is signed by the borrower and dated July 30, 2008. The broker agreement is signed by the borrower and Warindu and dated July 30, 2008. Although the Respondent was paid some fees at settlement, the HUD-1, at lines 801, 808 and 810, indicates that these were paid from the seller's funds, not the borrower's. *Id.*

As noted above in Finding of Fact 14, the Respondent did not file a written response to the examination findings, and so did not offer any explanation for the discrepancies in the dates on documents. For all of these reasons, I find that the CFR has met the burden to prove violations of section 12-805(d) of the CL Article in three instances.

Missing Records in Mortgage Loan Files

COMAR 09.03.06.04B(1) requires that a mortgage loan file shall contain certain specified items and "any other document on which the licensee relied in underwriting the loan." COMAR 09.03.06.04B(1)(p). Mr. Mainolfi testified that with respect to four loans ([REDACTED], [REDACTED], [REDACTED] and [REDACTED]) appraisal documents were missing from the files. *See also* CFR Ex. #7, at page 3 of 3.

Similarly, in two files ([REDACTED] and [REDACTED]) the HUD-1, at line 809, showed a processing fee paid by the borrower to QuickClose Processing, LLC. CFR Ex. ##10 and 14. Counsel for the CFR proffered that the amount was \$595.00. In both instances, there was no invoice for these services in the file, as required by COMAR 09.03.06.04B(1)(n).

The fact that these required documents are missing suggests at least the possibility that the borrowers never received them. For all of these reasons, I find that the CFR has met the burden to prove violations of COMAR 09.03.06.04B(1) in six instances.

The Georgia Proceedings

The examiner's report referred to the actions taken by the Georgia banking authorities against the Respondent and Gaddh individually. CFR Ex. #7. As the documents submitted by the CFR show, the Georgia authorities charged the Respondent with numerous violations of law in that state, including but not limited to employing convicted felons and accepting loans from unlicensed loan originators. See CFR Ex. ##19A-19F. The Respondent and Gaddh contested the charges unsuccessfully in an administrative proceeding. Eventually, the Georgia authorities accepted the surrender of the Respondent's Georgia mortgage lender's license, and entered a final Cease and Desist Order against Gaddh, both effective December 18, 2008. The Respondent may never re-apply for a mortgage lender's license in the State of Georgia; it was required to cease all mortgage lender activities by March 1, 2009. CFR Ex. #19, at 2.

The CFR argued that the Respondent's conduct in Georgia was similar to its conduct in Maryland, and demonstrated a pattern of non-compliance with the laws and regulations governing the mortgage lending business. I agree; the Respondent's conduct in Georgia demonstrates unworthiness, bad faith, dishonesty, and other qualities that indicate that the Respondent's business has not been or will not be conducted honestly. See Md. Code Ann., Fin. Inst. § 11-517(a)(5) (Supp. 2009). The Respondent's conduct in the other state supports the CFR's conclusion that the public welfare imperatively required emergency action and that summary suspension was appropriate under section 10-226(c)(2) of the State Government Article.

Summary

I am persuaded that the CFR has established all the charges set forth in the Order of April 22, 2010. For convenience, I have attached a table showing the violations associated with the various sample loan files as an Appendix to this Decision.

Sanctions, Penalties and Refunds

Revocation

Pursuant to the authority granted under sections 2-115 and 11-517 of the FI Article, the CFR is seeking revocation of the Respondent's License. Counsel for the CFR provided me with Final Orders in four other cases, demonstrating that the CFR has a policy of revoking mortgage lender's licenses for failure to pay past-due examination fees assessed under section 11-515(c) of the FI Article.⁷ I am bound by this policy to the same extent the CFR is. Md. Code, State Gov't § 10-214(b) (2009).

Also pursuant to sections 2-115 and 11-517, the CFR argues that although any one of the other violations would be sufficient to justify revocation, the Respondent's pattern of violations, as revealed in a sample of just twenty loan files, demonstrates a disregard for and an inability to comply with the laws and regulations governing the mortgage lending business in Maryland. Moreover, the Respondent did not bother to respond to the examination report, to produce documents as ordered by the CFR, or to appear at the hearing. The numerous statutory and regulatory violations, and the Respondent's apparent indifference to the consequences, also demonstrate "unworthiness, bad faith, dishonesty" and other qualities that suggest that the Respondent's business "has not been or will not be conducted honestly, fairly, equitably and efficiently." Md. Code Ann., Fin. Inst. § 11-517(a)(5) (Supp. 2009).

Furthermore, COMAR 09.03.06.20A imposes the following general duty upon licensees:

A licensee has a duty of good faith and fair dealing in communications, transactions, and course of dealings with a borrower in connection with the advertisement, solicitation, making, servicing, purchase, or sale of any mortgage loan[.]

Clearly, the Respondent did not conduct itself in conformity with this duty.

⁷ These are Case Nos. DFR-FY2010-202; DFR-FY2010-203; DFR-FY2010-261; and DFR-FY2010-208.

The Respondent's conduct amply justifies the CFR's request, which, if granted, will serve to protect the public. For all these reasons, I find that revocation of the Respondent's mortgage lender license is appropriate.

Penalties

As permitted by sections 2-115(b)(3) and 11-517 (c) of the FI Article, the CFR seeks to impose penalties against the Respondent in the following amounts:

- \$1,000.00 for the failure to produce information and documents as required by the Order to Produce;⁸
- \$5,000.00 for the failure to pay the past-due examination fee (plus the outstanding fee amount of \$1,035.00);
- \$5,000.00 for each of the three loans originated by unlicensed mortgage loan originators, for a total of \$15,000.00;
- \$1,000.00 for each of the three instances where the Respondent failed to provide a copy of the broker agreement to the borrower within ten days after completion of a loan application, for a total of \$3,000.00;
- \$1,000.00 for each of the four instances where the broker agreement provided for a finder's fee in excess of 8% of the loan amount, for a total of \$4,000.00;
- \$1,000.00 for each of the four instances where the appraisal documents were missing from loan files, for a total of \$4,000.00; and
- \$1,000.00 for each of the two instances where invoices for third-party processing services were missing from loan files, for a total of \$2,000.00.

These penalties total \$34,000.00.⁹

With regard to the civil penalty factors under sections 2-115(c) and 11-517(e) of the FI Article, the CFR first argued that the violations, and each of them, were serious. I agree, especially with regard to the Respondent's use of unlicensed mortgage loan originators and its repeated specification of finder's fees in excess of those permitted by law. The CFR pointed out the almost complete absence of good faith by the Respondent; the Respondent never gave a written response to the examiner's findings, never produced records as required, and failed to appear at the hearing. As to a history of previous violations, the Respondent was first licensed in

⁸ Counsel for the CFR provided me with a copy of Case No. DFR-EU-2009-082, in which a penalty of \$1,000.00 was imposed for a violation of section 2-114(b) of the FI Article.

⁹ The CFR did not seek a penalty for the failure of the sample broker agreement to contain a statement of the borrower's right to a refund in the event of rescission. See Md. Code Ann., Comm. Law § 12-805(c) (Supp. 2009).

Maryland on or about January 1, 2007, and this was its first examination. Nonetheless, it is undisputed that the Respondent engaged in a pattern of similar violations in Georgia, and surrendered its license there only a few months before the May 2009 examination. I think the CFR is entitled to take these facts into consideration.

As to the deleterious effect of the violations on the public and the mortgage industry, it is obvious that the Respondent's failure to adhere to the governing statutes and regulations, and its apparent indifference to its duty of good faith and fair dealing, harmed individual borrowers and generally contributed to the negative impression of the mortgage industry prevalent today. The CFR did not produce any evidence as to the Respondent's assets. As to other factors, the CFR argued that the Respondent essentially flouted the entire licensing scheme, again demonstrating a lack of good faith, and that the maximum allowable penalties were appropriate. I have no basis to disagree with this assessment.

Restitution

A lender may not retain a third party processing fee if the services were not documented. COMAR 09.03.06.09A; COMAR 09.03.06.04B(1)(n). Therefore, two of the borrowers, [REDACTED] and [REDACTED], are entitled to a refund of the \$595.00 paid to QuickClose Processing, LLC. CFR Ex. ##10 and 14; *see also* CFR Ex. #7, page 3 of 3.

For violations of sections 12-804(a) and 12-805(d)(3) of the CL Article, a mortgage broker "shall forfeit the greater of" \$500.00 or three times the amount of the finder's fee collected. Md. Code Ann., Comm. Law § 12-807 (2005). The evidence shows that finder's fees were collected at settlement from four borrowers as to whom the Respondent committed such violations: [REDACTED] (\$3,485.02); [REDACTED] (\$1,375.00); [REDACTED] (\$2,212.50); and [REDACTED] (\$3,190.00). CFR Ex. ##10, 12, 13, and 14. These borrowers are entitled to a refund of three times the amount collected, as follows: [REDACTED] (\$10,455.06); [REDACTED] (\$4,125.03); [REDACTED] (\$6,637.50) and

████ (\$9,570.00). A table consolidating all the recommended refunds is included in the Recommended Order, below.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated the MMLL by failing to pay the required examination fee. Md. Code Ann, Fin. Inst. § 11-515(c) (Supp. 2009); COMAR 09.03.06.23D.

I further conclude as a matter of law that the Respondent failed to produce information and records as required by the CFR's Order to Produce, dated April 22, 2010. Md. Code Ann, Fin. Inst. § 2-114 (2003).

I further conclude as a matter of law that the Respondent violated MMLL, the MMOL, and COMAR 09.03.06.03 by accepting Maryland loan referrals from at least three persons who were not duly licensed as mortgage loan originators. Md. Code Ann, Fin. Inst. §§ 11-602 and 11-603 (Supp. 2009).

I further conclude as a matter of law that the Respondent violated the MFFL by specifying in four broker agreements a finder's fee in excess of 8% of the loan amount. Md. Code Ann., Comm. Law §§ 12-801 (Supp. 2009) and 12-804 (2005).

I further conclude as a matter of law that the Respondent also violated the MFFL by failing to provide three Maryland borrowers with a copy of their broker agreement within ten business days after the completion of a loan application. Md. Code Ann., Comm. Law § 12-805(d)(3) (Supp. 2009).

I further conclude as a matter of law that the Respondent violated COMAR 09.03.06.04B(1)(p) by failing to include and maintain appraisal documents in four borrowers' loan files.

I further conclude as a matter of law that the Respondent violated COMAR 09.03.06.04B(1)(n) by failing to include and maintain invoices for third party processing services in two borrowers' loan files. The Respondent shall be required to refund to those two borrowers the third party processing fee it received at settlement. COMAR 09.03.06.09A; COMAR 09.03.06.04B(1)(n).

I conclude as a matter of law that the Respondent is subject to revocation of its license, a final cease and desist order, and civil penalties for its violations of the Financial Institutions and Commercial Law Articles. Md. Code Ann, Fin. Inst. §§ 2-115 (2003) and 11-517 (Supp. 2009).

Finally, I conclude as a matter of law that for the violations of sections 12-804 and 12-805 of the CL Article, the Respondent shall be required to forfeit to four borrowers three times the amount of the finder's fees collected at settlement. Md. Code Ann., Comm. Law § 12-807 (2005).

RECOMMENDED ORDER

I RECOMMEND that the CFR:

ORDER that the Respondent cease and desist from engaging in the mortgage lending business in Maryland;

ORDER that the Respondent's Maryland Mortgage Lender's License be revoked;

ORDER that the Respondent pay to the Maryland Commissioner of Financial Regulation a civil penalty of \$34,000.00, calculated as follows:

- \$1,000.00 for the failure to produce information and documents as required by the April 22, 2010 Order to Produce;
- \$5,000.00 for the failure to pay the past-due examination fee;
- \$5,000.00 for each of the three loans originated by unlicensed mortgage loan originators, for a total of \$15,000.00;
- \$1,000.00 for each of the three instances where the Respondent failed to provide a copy of the broker agreement to the borrower within ten days after completion of a loan application, for a total of \$3,000.00;
- \$1,000.00 for each of the four instances where the broker agreement provided for a finder's fee in excess of 8% of the loan amount, for a total of \$4,000.00;

- \$1,000.00 for each of the four instances where the appraisal documents were missing from loan files, for a total of \$4,000.00; and
- \$1,000.00 for each of the two instances where invoices for third-party processing services were missing from loan files, for a total of \$2,000.00.

ORDER that the Respondent pay to the CFR the past-due Mortgage Lender's examination fee in the amount of \$1,031.25;

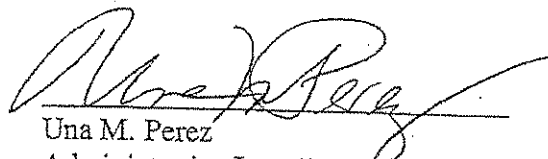
ORDER that the Respondent pay refunds to the following borrowers in the specified amounts:

[REDACTED]	\$11,050.06
[REDACTED]	\$4,125.03
[REDACTED]	\$6,637.50
[REDACTED]	\$10,165.00

and

ORDER that the records and publications of the CFR reflect this decision.

August 11, 2010
Date Decision Mailed


Una M. Perez
Administrative Law Judge

UMP/ch
Doc #115570

Appendix: Table of Violations (produced from CFR Ex. #7)

Borrower	Unlicensed Origination ¹	Amount Specified Above 8 % ²	Broker Agreement Not Delivered in 10 Days ³	Appraisal Document Missing ⁴	Invoice for Third Party Processing Missing ⁵
1. [REDACTED]				X	
2. [REDACTED]		X	X		X
3. [REDACTED]	X				
4. [REDACTED]		X			
5. [REDACTED]				X	
6. [REDACTED]			X		
7. [REDACTED]	(White out)	X		X	X
8. [REDACTED]		X			
9. [REDACTED]	X		X		
10. [REDACTED]	X			X	

¹ FI § 11-603, former 11-604.

² CL § 12-804(a).

³ CL § 12-805(d).

⁴ COMAR 09.03.06.04B(1)(p).

⁵ COMAR 09.03.06.04.B(1)(n).